

**DISCLAIMER**

*This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).*

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 7, 2000

APPLICATION OF

DOSWELL LIMITED PARTNERSHIP

CASE NO. PUE000092

For a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2, for an exemption from the provisions of Chapter 10 of Title 56 pursuant to Va. Code § 56-265.2 B, for a waiver of or exemption from Commission information requirements, for interim authority to make financial expenditures and to undertake certain activities, and for other and further relief

PROTECTIVE ORDER

On February 24, 2000, Doswell Limited Partnership ("Doswell") filed a motion requesting the entry of a Protective Order setting forth the procedures by which confidential information shall be handled generally in this proceeding.

UPON CONSIDERATION of Doswell's request, the Commission is of the opinion and finds that said request should be granted. Accordingly,

IT IS ORDERED THAT any documents, materials, and information to be produced by Doswell, either for itself or for its affiliates, or to be produced by any other party ("Other

Party") in this proceeding in response to Commission orders, Commission Staff ("Staff") data requests or properly propounded interrogatories or requests for production of documents from Other Parties in this proceeding, which documents, materials, or information the producing party designates as confidential ("Confidential Information"), shall be produced, examined, and used only in accordance with the following conditions:

(1) All Confidential Information produced to Doswell, Staff, or Other Parties shall be used solely for the purpose of this proceeding (including any appeals).

(2) Access to Confidential Information shall be specifically limited to Doswell, Staff, or Other Parties, their counsel and expert witnesses, and to support personnel who are working on this case under the direction of their counsel or expert witnesses and to whom it is necessary that the Confidential Information be shown for the purpose of this proceeding, so long as each such person has executed an Agreement to Adhere to the Protective Order ("Agreement"), which is Attachment A to this Protective Order. All Agreements must be promptly forwarded to the producing party upon execution.

(3) In the event that Doswell, Staff, or Other Parties seek permission to grant access to any Confidential Information to any person other than the persons authorized to receive such information under paragraph (2) above, the party desiring permission shall seek the consent of counsel for the producing

party. In the event of a negative response, the party seeking disclosure permission may apply to the Commission for such permission.

(4) The producing party shall be under no obligation to furnish Confidential Information to persons other than those authorized to receive such information under paragraph (2) above unless specifically ordered by the Commission to do so. Parties are encouraged to seek consents to the maximum extent practicable.

(5) (a) Where a party contends that due to the Competitively Sensitive nature of requested documents or materials the procedures for treatment of Confidential Information fail to provide adequate safeguards, the party producing the Competitively Sensitive material shall be required to provide the documents for review, in the offices of the producing party, by only counsel and designated regulatory and legal personnel and outside expert witnesses employed or retained by the reviewing party and under the direction and control of counsel. Such party's reviewing representatives may review, but not copy, the documents sought to be protected, and they must agree to treat the Competitively Sensitive Information according to the provisions of this Protective Order to the maximum extent applicable, and shall sign and forward an Agreement (Attachment A) to the producing party. Employees, officers, or directors of a party, or consultants or experts

retained by a party, who have been and who are currently involved in marketing shall not be provided access to Competitively Sensitive Information. The provisions of this section do not apply to the Commission Staff. All Competitively Sensitive Information shall be delivered to the Commission Staff, upon request, and shall be treated by Staff in accordance with the provisions for Confidential Information.

(b) Where a party contends that it should not be required to produce specific documents or materials due to their Competitively Sensitive nature and some other grounds, such as relevancy, the party raising such an objection must state clearly each of its grounds for objecting to the interrogatory or data request including that the requested information is Competitively Sensitive. In responding to any motions to compel, the party contending that it should not be required to produce the Competitively Sensitive Information shall specify any factual or legal predicates supporting its claim and shall provide a log enumerating all such information. The log shall specify the following about the information withheld: (i) the original requesting party; (ii) the data request number and date of the request; (iii) the type of information (e.g., computer-stored information, microfilm, letter, memorandum, policy circular, minute book, telegram, chart, etc.) or some other means of identifying the requested information; (iv) its present location and custodian; (v) the nature of the information; and

(vi) why the procedures for treatment of Confidential Information are not adequate safeguards.

(c) Individuals who become viewing representatives under previous paragraph 5 (a) may not engage in or consult in any marketing activities prescribed in that paragraph for three (3) years beginning and continuing after first viewing such Competitively Sensitive Information. A party may not withhold access to information solely on the basis that the requested information is Competitively Sensitive.

(6) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding which the producing party has designated, in whole or in part, as Confidential Information or Competitively Sensitive Information.

(7) In the event Doswell, Staff, or Other Parties seek to introduce at a hearing testimony, exhibits, or studies that disclose Confidential Information, the Staff or the party seeking such introduction shall:

- a. notify the producing party at least three (3) days in advance of any such hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party;
- b. if such testimony is prefiled, file such testimony, exhibits or studies with the

Commission under seal and serve on all parties of record copies of the testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated Confidential Information. The testimony, exhibits, or studies containing the Confidential Information filed with the Commission shall be kept under seal unless and until the Commission rules to the contrary. Each party shall, upon signing Attachment A to this Protective Order, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the Confidential Information and each party and counsel shall be bound by this Order insofar as it restricts the use of and granting of access to the Confidential Information.

(8) Oral testimony regarding Confidential Information, if ruled admissible by the Commission, will be taken in camera and that portion of the transcript recording such testimony shall be placed in the record under seal.

(9) In the event Doswell, Staff, or Other Parties seek to introduce at a hearing testimony, exhibits, or studies that disclose Competitively Sensitive Information, the Staff or the party seeking such introduction shall notify the producing party

at least ten (10) days in advance of any such hearing unless a shorter period would not unduly prejudice the producing party. Any testimony regarding Competitively Sensitive Information shall be taken in camera and in the presence of only those persons who have been granted access to the specific Competitively Sensitive Information pursuant to a nondisclosure agreement with the producing party. That portion of the transcript recording such testimony shall be placed in the record under seal.

(10) No person authorized under this Protective Order to have access to Confidential Information or Competitively Sensitive Information shall disseminate, communicate, or reveal any such Confidential Information to any person not specifically authorized under this Protective Order to have access.

(11) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Protective Order shall be returned by Doswell and Other Parties to the producing party (or destroyed) if requested to do so by the producing party. At such time, any originals or reproductions of any Confidential Information in Staff's possession will be returned to the producing party, destroyed, or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. Insofar as the provisions of this Protective Order restrict the communications and use of the

Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information.

(12) This Protective Order does not preclude Doswell, Staff, or any Other Party from arguing, prior to public disclosure, that documents, materials, and information received under the Protective Order should not be treated as Confidential or Competitively Sensitive. But in no event shall any party disclose Confidential or Competitively Sensitive Information it has received subject to this Protective Order absent a finding by a Hearing Examiner or the Commission that such information does not require confidential treatment. Any party objecting to treating information as either Confidential or Competitively Sensitive may file with the Clerk of the Commission a motion seeking in camera review by a Hearing Examiner of the documents alleged to be subject to treatment as Confidential or Competitively Sensitive. If any party or Staff desires to make such an assertion, the producing party shall be given reasonable notice before being required to bear the burden of proving the contrary, and reasonable notice shall be given at least three (3) days in advance of a hearing in connection with testimony that is not prefiled and that contains Confidential Information.

(13) A producing party is obligated to separate non-confidential and non-competitively sensitive documents,



materials, and information from Confidential Information and Competitively Sensitive Information wherever practicable, and to provide the non-confidential and non-competitively sensitive documents, materials, and information.

(14) Any party who obtains Confidential Information or Commercially Sensitive Information and thereafter misuses it in any way shall be subject to sanctions as the Commission may deem appropriate, in addition to any other liabilities which might attach from such misuse.

**DISCLAIMER**

*This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).*

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

ATTACHMENT A

APPLICATION OF

DOSWELL LIMITED PARTNERSHIP

CASE NO. PUE000092

For a certificate of public  
convenience and necessity  
pursuant to Va. Code § 56-265.2,  
for an exemption from the  
provisions of Chapter 10 of  
Title 56 pursuant to Va. Code  
§ 56-265.2 B, for a waiver of or  
exemption from Commission information  
requirements, for interim authority  
to make financial expenditures and  
to undertake certain activities, and  
for other and further relief

AGREEMENT TO ADHERE TO PROTECTIVE ORDER

I, \_\_\_\_\_, on behalf of and representing  
\_\_\_\_\_, hereby acknowledge having read and  
understood the terms of the Protective Order entered in this  
proceeding by the Commission on \_\_\_\_\_, 2000, and agree  
to treat all Confidential Information that I receive in  
connection with this case No. PUE000092 as set forth in that  
Protective Order.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

On behalf of: \_\_\_\_\_